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Message Text

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ACTION L-03

INFO OCT-01 EUR-25 ISO-00 CIAE-00 PM-07 INR-10 ACDA-19

NSAE-00 PA-04 RSC-01 PRS-01 SP-03 USIA-15 TRSE-00

SAJ-01 DODE-00 H-03 NSC-07 SS-20 COME-00 EB-11 LAB-06

SIL-01 IO-14 DRC-01 OMB-01 /154 W
---------- 052632
P R 271456Z JUN 74
FM AMEMBASSY BONN
TO SECSTATE WASHDC PRIORITY 3461
INFO CINCUSAREUR HEIDELBERG
CINCEUR VAIHINGEN

C O N F I D E N T I A L SECTION 01 OF 02 BONN 10197

CINCUSAREUR HEIDELBERG FOR DCSPER AND POLAD
DEPT FOR L/PM AND EUR/CE
EUCOM FOR POLAD

E.O. 11652: GDS
TAGS: ELAB, MARR, GW
SUBJECT: APPLICABILITY OF NEW FRG PERSONNEL REPRESENTA-
TION LAW TO CIVILIAN EMPLOYEES OF SENDING STATE FORCES
IN FRG

REF: STATE 104443

1. USAREUR DCSPER HAS INFORMED EMBASSY THAT SUBJECT
TO AGREEMENT ON OR CLARIFICATION OF REMAINING PROBLEM
AREAS SPECIFIED PARA 3 BELOW AND CONCLUSION OF FORMAL
UNDERSTANDING BETWEEN SENDING STATE AND FRG ON THESE
ISSUES, PROTOCOL OF SIGNATURE (PS) PROVIDES SUFFICIENT

PROTECTION TO USAREUR SO AS TO MAKE APPLICATION OF 1974
PERSONNEL REPRESENTATION LAW (PRL) NOT SERIOUSLY OBJEC-
TIONABLE. USAREUR HAS REVIEWED REFTEL AND BELIEVES THAT
USG SHOULD PROCEED IN ACCORDANCE WITH PROPOSAL CONTAINED
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IN PARA 3 REFTEL.

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2. IN VIEW OF DANGERS OF RENEGOTIATION MENTIONED BY FRG FONOFF REP AT APRIL 2 MEETING (SEE PARA 3, BONN'S 5663) AND RELUCTANCE IN THIS REGARD WE WOULD EXPECT OTHER SENDING STATES (S/S) TO MANIFEST AT S/S MEETING SCHEDULED FOR JULY 1, EMBASSY AGREES THAT PREFERABLY IDENTICAL REPLY NOTES BY S/S TO FONOFF NOTE VERBALE OF MARCH 19 ALONG LINES PROPOSED PARA 3 REFTEL SHOULD BE ADEQUATE. HOWEVER, IN VIEW OF SPECIFIC CIR-CUMSTANCES IN WHICH PROCEDURE OR DISPOSTION OF MATTER UNDER NEW ARTICLE 56(9) OF PS MIGHT DIFFER FROM THOSE UNDER 1974 PRL, EVEN THOUGH LATTER DISPOSITION WOULD BE ACCEPTABLE TO USAREUR IN MOST CASES, EMBASSY PROPOSES THAT REPLY TO FRG NOTE, AFTER MAKING POINT (A) OF PARA 3 REFTEL, STATE THAT DESPITE (A) AND IN THE GENERAL INTEREST OF THOSE EMPLOYEES, THE S/S ARE PREPARED VOLUNTARILY TO APPLY THE RELEVANT PROVISIONS OF THE 1974 PRL TO SUCH EMPLOYEES, WHILE RESERVING THEIR RIGHT IN THOSE AREAS WHERE CONTRACTUAL AGREEMENTS, INCLUDING THE PROVISIONS OF ARTICLE 56(9) OF THE PS, WOULD TAKE PRECE-DENCE OVER THE PROVISIONS OF THE NEW LAW (AS ACKNOWLEDGED BY THE FONOFF'S NOTE VERBALE), TO INSIST ON THE APPLICA-TION OF THE PROVISIONS OF THE CONTRACTUAL AGREEMENTS AND ARTICLE 56(9) IN THOSE SPECIFIC CASES WHEN A S/S CON-SIDERS THAT THE APPLICATION OF THE 1974 PRL WOULD BE UNACCEPTABLE FOR ANY REASON. ADDITIONALLY, THE S/S REPLY NOTES MIGHT CLOSE WITH A RESERVATION OF THE RIGHT (L) TO RETRACT THEIR VOLUNTARY AGREEMENT TO APPLY THE 1974 PRL AND (2) NOT TO APPLY FUTURE PROVI-SIONS OF, OR AMENDMENTS TO, FRG DOMESTIC LAW IN THIS AREA SHOULD THEY NOT BE ACCEPTABLE.

3. THE FOLLOWING ARE THOSE AREAS WHERE USAREUR CONSIDERS THAT THE 1974 PRL PROCEDURE WOULD DIFFER FROM THAT UNDER THE SA AND/OR PS:
(A) UNDER RE ARTICLE 56 (1) THE FORCES ARE GIVEN THE

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FM AMEMBASSY BONN
TO SECSTATE WASHDC PRIORITY 3462
INFO CINCUSAREUR HEIDELBERG
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C O N F I D E N T I A L SECTION 02 OF 02 BONN 10197

RIGHT TO DEFINE "AGENCIES" FOR PURPOSES OF THE PRL THROUGH THE RIGHT TO DEFINE "INDIVIDUAL ADMINISTRATIVE UNITS AND ESTABLISHMENTS." SECTION 6(3) OF THE 1974 PRL GIVES EMPLOYEES THE RIGHT TO DEFINE INDEPENDENT "AGENCIES" IN THE LIMITED SITUATIONS WHERE PART OF AN EXISTING AGENCY IS REMOTELY LOCATED. THE FEDERAL FINANCE MINISTRY (FFM) CLAIMS THERE IS NO CONFLICT; USAREUR STATES THAT OPERATIONALLY US FORCES COULD ACCEPT THE LIMITED AGENCY DESIGNATION RIGHT CONFERRED ON EMPLOYEES BY THE 1974 PRL. (B) WHILE ARTICLE 56(9) IN PARA 7 STATES THAT IN CERTAIN CIRCUMSTANCES THE AGENCY HEAD NEED NOT EVEN SUBMIT OR DISCUSS DRAFTS OF ADMINISTRATIVE INSTRUCTIONS WITH WORKS COUNCILS PRIOR TO THEIR ISSUANCE, SECTION 78, PARA 1 OF THE 1974 PRL REQUIRES THE COOPERATION PROCEDURE IN THESE SITUATIONS, WHICH IS A FORM OF WORKS COUNCIL PARTICIPATION GREATER THAN SUBMISSION AND DISCUSSION. FFM TAKES THE POSITION THAT THE FORCES MUST APPLY THE COOPERATION PROCEDURES. USAREUR HAS INDICATED THAT THE FORCES COULD ACCEPT THE COOPERATION PROCEDURE PROVIDED ONLY THAT THIS IS COMPATIBLE WITH THE FULFILLMENT OF DEFENSE RESPONSIBILITIES. (C) UNDER ARTICLE 56(7) (A) OF SA, S/S FORCES ARE GIVEN RIGHT
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TO CLASSIFY JOBS IN ACCORDANCE WITH THE TARIFF AGREEMENT. ARTICLE 75 OF THE 1974 PRL GIVES THE WORKS COUNCILS THE RIGHT TO CO-DETERMINATION (REDUCED TO COOPERATION IN THE CASE OF S/S) IN CASES OF PERSON CLASSIFICATION. USAREUR HAS STATED IT COULD NOT ACCEPT COOPERATION IN JOB CLASSIFICATION. THE EMBASSY BELIEVES THAT SO LONG AS A JOB CLASSIFICATION REMAINS THE EXCLUSIVE RIGHT OF THE S/S FORCES, PERSON CLASSIFICATION CAN BE VIEWED AS A SEPARATE STEP FOR WHICH COOPERATION SHOULD BE ACCEPTABLE, AND THAT NO INCONSISTENCY BETWEEN ARTICLE 56(7)(A) AND THE 1974 PRL EXISTS IN RESPECT OF JOB CLASSIFICATION. (D) RE ARTICLE 56(9), PARA 4, WAS INTENDED TO IMPOSE LESS STRINGENT REQUIREMENTS THAN THE

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1955 LAW RE LENGTH OF SERVICE AND NATIONALITY REQUIRE-
MENTS FOR WORKS COUNCIL OFFICE ELIGIBILITY. HOWEVER,
THE 1974 PRL REMOVES THESE ELIGIBILITY REQUIREMENTS
ENTIRELY AND USAREUR IS PREPARED TO APPLY THE NEW LAW.
ALTHOUGH THE S/S AND FFM CURRENTLY HAVE DIFFERENT VIEWS
ON WHICH SERVICE WITH A S/S WILL QUALIFY TO MEET THE NEW
LAW'S PUBLIC SERVICE REQUIREMENT, WE BELIEVE THAT A
UNIFORM INTERPRETATION BY THE S/S AND THE FRG CAN BE
ACHIEVED INFORMALLY WITHOUT AN INTERNATIONAL AGREEMENT.

4. ACTION REQUESTED: DEPARTMENT COMMENTS ON THE
EMBASSY'S PROPOSAL IN PARA 2 TO DEAL WITH THESE
RELATIVELY MINOR MATTERS, IF POSSIBLE IN TIME FOR
THE S/S MEETING SCHEDULED FOR MONDAY, JULY 1. EMBASSY
WOULD LIKE AT THIS MEETING TO SUBMIT DRAFT REPLY NOTE FOR
S/S CONSIDERATION ALONG LINES OF PARA2. EMBASSY HOPES
THAT S/S WILL MAKE PROGRESS IN DEFINING FINAL RESOLUTION
OF THIS MATTER, AS WE WERE RECENTLY INFORMED THAT ON
JULY 5 GENERAL DAVISON, CINCUSAREUR, WILL BRIEFLY BE
ADDRESSING FIRST MEETING OF WORKS COUNCIL TO BE HELD IN
HEIDELBERG UNDER ARTICLE 56(9) AS IT CAME INTO FORCE
JANUARY 18, 1974. COUNCIL WILL HAVE 31 MEMBERS AFTER
ELECTION, FOR WHICH POSITIONS WERE INCREASED FROM
25 TO 31 IN PARTIAL APPLICATION OF 1974 PRL. IF JULY 1
S/S MEETING DEFINES NATURE OF RESOLUTION OF QUESTION,
THIS WOULD FACILITATE PREPARATION OF ANY BRIEFING
FOR GENERAL DAVISON IN
ANTICIPATION OF POSSIBLE QUESTIONS WHICH FOREIGN OFFICE
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ANTICIPATED THAT WORKS COUNCIL MEMBERS MIGHT SEEK TO
RAISE ABOUT FINAL DECISION ON APPLICATION OF 1974 PRL.
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